**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Appeal No. 517 of 1999.**

**Date of decision: 04.12.2006.**

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State of H.P. ... Appellant

Versus

Yashveer Singh & Another … Respondents

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*Coram :*

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ashutosh Burathoki, Addl. Advocate General.

For the respondents: Mr. S.D.Gill, Advocate.

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**V.K. Ahuja, J. (Oral):**

This appeal has been filed by appellant against the acquittal of the respondents by the Court of learned Judicial Magistrate–II, Hamirpur, vide judgment dated 11.8.1999 under Section 325 read with Section 34 I.P.C.

Briefly stated the facts of the case are that a statement was made by complainant Kartar Singh under Section 154 Cr.P.C. in which he had alleged that on 24.8.1997 at about 7.00P.M., he was sitting outside the shop of Amar Nath and accused Yashveer Singh accompanied by his brother-in-law, whose name he does not know came there and gave him beatings with iron rod. The beatings were given over his head, face and that the brother-in-law of accused Yashveer gave blows with fist. It was

[1]Whether reporters of Local Papers may be allowed to see the judgment? No.

further alleged that he was rescued by Amar Nath, shopkeeper and Bidhi Chand and the blood had oozed out from his head. He was taken to the hospital Tauni Devi and then he was referred to District Hospital, Hamirpur. On this report, case was registered and both the respondents were tried under the above sections, which resulted in the acquittal of the respondents.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant and Mr. S.D. Gill, Advocate, for the respondents and have gone through the record.

The submissions made by the learned Additional Advocate General that the statement of the complainant had been duly corroborated on all the material particulars by the eye witness, namely, PW2 Bidhi Chand, but the learned trial Court had wrongly relied upon the testimony of the Investigating Officer PW10 Om Chand and as such, had wrongly come to the conclusion that the guilt of the respondents was not established.

On the other hand, the learned counsel for the respondents had supported the impugned judgment for the reasons given therein.

On perusal of the record of the case, it is clear that the complainant had alleged in regard to the presence of Amar Nath, shopkeeper and Bidhi Chand who had allegedly rescued him at that time. Out of these two witnesses named by the complainant, PW2 Bidhi Chand only was examined and Amar Nath named in the statement of the complainant was neither cited as an eye witness nor examined by the prosecution. Coming to the testimony of PW1 Kartar Singh, complainant,

he stated for the first time in the Court that his one tooth was broken at that time as a result of the injuries given by accused Yashveer Singh with the iron rod. He was confronted with the statement under Section 154 Cr.P.C. in which he had no where stated that his tooth was broken at that time. This is a material omission made by the complainant which can be said to be fatal insofar as the prosecution case is concerned. It cannot be believed that the complainant would have forgotten that his tooth was broken at the time of the incident as a result of the injuries inflicted by the accused persons. The fact that his tooth was broken had come in the statement of PW2 Bidhi Chand who stated that Kartar Singh had told him that his tooth had been broken meaning thereby that his tooth had been broken at the spot. However, when the statement was made by the complainant Ext.PW1/A he did not mention this material fact. Therefore, the possibility that the tooth was not broken at that time cannot be ruled out.

Apart from the above, the prosecution had not examined Shakti Chand who was stated to be present at that time as per the statement of the complainant made in Court as well as by PW2 Bidhi Chand. In view of the fact that Bidhi Chand and Shakti Chand were the two witnesses stated to be present at that time, Shakti Chand could have been examined. He has been given up by the State giving the statement that he is of the same sequence and not necessary, results in raising an adverse inference against the prosecution for not examining a material witness. In the statement made by PW2 Bidhi Chand, he had stated that the other accused Baldev Singh had only caught hold him from his legs and gave no beatings, which is contrary to the version of

PW1 Kartar Singh who had alleged in regard to the beatings given by this accused, but in the Court he had not attributed any specific occurrence to him. The learned trial Court had wrongly concluded that the Investigating Officer statement has to be relied upon that the beatings were given with legs, hands and face, but no rod was used. He was not an eye witness and he could not have stated that the rod was not used. The fact that the rod may not have been recovered his another thing and he could have stated that the rod could not be recovered inspite of the efforts made by him. However, it cannot be said that the said observation made by learned trial Court about the testimony of PW10 Om Chand is correct. Moreover, in case the injury had been sustained by the injured on the face resulting in the breaking of tooth, as the injury was allegedly inflicted with an iron rod, there should have been corresponding injuries. But in MLC Ext. PW5/A, there is no mention of any corresponding injury on the face. The net conclusion remains the same and the conclusion arrived at by the learned trial Court cannot be said to be perverse which calls for interference by this Court and as such, the appeal filed by the appellant is dismissed. A copy of the judgment along with record be sent to the concerned Court. Bail bonds stand discharged forthwith.

**( V.K. Ahuja ),**
**Judge**

**December 04, 2006**
**(BSS)**